

Notice of Allowability

Application No.

10/649,118

Examiner

Aaron M. Richer

Applicant(s)

HAMBURG, MARK

Art Unit

2676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to response to restriction filed 24 October 2005.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No./Mail Date _____ |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Tim Pham on 6 January 2006.

In the claims:

Cancel claims 14-33.

DETAILED ACTION

Election/Restrictions

2. Applicant's election with traverse of invention I in the reply filed on October 24, 2005 is acknowledged. The traversal is on the ground(s) that claim 14 is a species of claim 1. The restriction is found to be improper, but has been replaced with an election of species. The invention of claims 21-33 still stands as restricted.

3. This application contains claims directed to the following patentably distinct species of the claimed invention: Invention 1, claims 1-13, are directed to a first species, disclosed in fig. 4 and table 3 of the specification. Invention 2, Claims 14-20, are directed to a second species disclosed in fig. 5 and table 4 of the specification. Further support for this is disclosed on page 14 of the specification, lines 18-20.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims

Art Unit: 2676

are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. During a telephone conversation with Tim Pham on January 5, 2006 a provisional election was made without traverse to prosecute the invention of I, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-33 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Allowable Subject Matter

5. Claims 1-13 are allowed.

6. As to claim 1, Hamburg (U.S. Patent 6,421,460) discloses:

calculating a resulting alpha according to a first continuous function that linearly interpolates between the first element alpha and the second element alpha as a first parameter varies between 0 and 1, inclusive (col. 7, lines 48-62; a new alpha is interpolated from two elements as a first parameter is set to 1);

and calculating an intermediate color value in accordance with the transfer mode, the color value of the first graphic element, the color value of the second graphic

Art Unit: 2676

element, and the first parameter (col. 7, lines 48-62; a transfer mode takes into account a first element color, a second element color and the resulting alpha from the previous alpha operation which takes into account the first parameter).

Hamburg does not disclose calculating a second parameter which is a ratio of the smaller of the first and second graphic element alphas and the resulting alpha. The Hamburg reference does calculate a ratio, in the division step disclosed in col. 5, lines 3-13. However, this ratio is that of an upper element alpha to a resulting alpha. An upper element alpha is not the same as a minimum alpha, as both upper and lower alphas in Hamburg are allowed to be of any value between 0 and 1 (col. 5, lines 10-12). To switch the ratio component from being an upper element alpha to a minimum alpha would not be obvious to one skilled in the art without the use of a second reference or the hindsight of the instant application. No other reference combinable with Hamburg fills the gaps in Hamburg to allow one skilled in the art to construct an invention that uses the particular calculations of claim 1 to obtain a color value result.

7. The following is an examiner's statement of reasons for allowance:

As to claim 1, the prior art does not anticipate the limitation of calculating a second parameter, the second parameter being a ratio of the smaller of the first and second graphic element alphas and the resulting alpha along with the other limitations of claim 1.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

Art Unit: 2676

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M. Richer whose telephone number is (571) 272-7790. The examiner can normally be reached on weekdays from 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Bella can be reached on (571) 272-7778. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AMR
1/9/05

MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600